

Decision 01-11-044 November 29, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SAN DIEGO
GAS & ELECTRIC COMPANY for Authority
Pursuant to Public Utilities Code Section 851 to
Exchange Radio Frequencies and Equipment.
(U 902 M)

Application 01-08-037
(Filed August 28, 2001)

O P I N I O N

I. Summary

San Diego Gas & Electric Company (SDG&E) is authorized to transfer its ten 800 megahertz (MHz) Land Mobile Radio (LMR) licenses and title to related equipment to Nextel of California, Inc. (Nextel) in exchange for 25 of Nextel's 900 MHz frequencies and Nextel Communication's Inc.¹ direct payment on SDG&E's behalf under contracts for new radio equipment, installation costs, programming services, and implementation services from Motorola, Inc. (Motorola) and other service providers (collectively, the "Exchange"). This arrangement is proposed according to the Asset Exchange Agreement attached to the application as Exhibit A. We grant the exchange pursuant to Section 851 of the Public Utilities Code.²

¹ Nextel Communications, Inc. is the parent of Nextel.

² All statutory references are to the Public Utilities Code, unless otherwise noted.

II. Categorization

SDG&E has requested that this matter be categorized as ratesetting and states that no hearings are necessary. By Resolution ALJ 176-3071, dated September 20, 2001, the Commission preliminary determined that this was a ratesetting proceeding and that no hearings were expected.

Notice of this application appeared in the Commission's Daily Calendar of September 6, 2001. With no filed protests, there is no reason to hold a public hearing and no reason to change the preliminary determinations made in Resolution ALJ 176-3071. The preliminary ratesetting categorization set forth in Resolution ALJ 176-3071 is affirmed.

III. Jurisdiction

This application has been filed pursuant to Section 851, which requires a public utility to obtain Commission authorization to sell, lease, assign, mortgage, or otherwise dispose of any part of its property necessary or useful in the performance of its public utility duties.

IV. The Parties

SDG&E, a California corporation, is an electric and gas corporation subject to the jurisdiction of this Commission. Its principal service territory is within the Counties of San Diego and Imperial, and parts of Orange County. SDG&E's principal place of business is 8330 Century Park Court, San Diego, California 92123.

Nextel, a California corporation, is a wholly-owned indirect subsidiary of Nextel Communications, Inc. Nextel is a telecommunications service provider subject to the jurisdiction of this Commission and the Federal Communications Commission (FCC).

V. The Transaction

SDG&E seeks to transfer to Nextel its ten 25 KiloHertz (KHz) wide channels in the 800 MHz spectrum with a total market value of approximately \$5 million and related nine-year-old equipment with a total book value of approximately \$5.7 million. The total value of SDG&E's radio frequencies and related equipment is approximately \$10.7 million. SDG&E estimates that the retail replacement cost for its 800 MHz equipment is approximately \$12 million.

In exchange for SDG&E's radio frequencies and equipment, Nextel will transfer to SDG&E 25 of its 12.5 KHz wide channels in the 900 MHz spectrum with a market value of approximately \$5 million. Nextel Communications, Inc. will also pay Motorola, Inc. (Motorola) approximately \$8.7 million for the replacement equipment SDG&E will need to operate its new 900 MHz frequencies. In addition, Nextel Communications, Inc. will pay a service provider up to \$320,000 on SDG&E's behalf for mobile and portable radio installation and programming services.

SDG&E will pay Motorola approximately \$1.6 million for the replacement equipment considered by SDG&E to be an upgrade from its nine year-old 800 MHz equipment.

The replacement equipment is set forth in a System Agreement entered into by SDG&E, Nextel, and Motorola, as set forth in Exhibit B to the application. Schedules A and B to the System Agreement were submitted under seal because they contain detailed technical specifications of the equipment and other proprietary information belonging to Motorola. Under the terms of the System Agreement, SDG&E is prohibited from disclosing such information to any other party other than the Commission. With no opposition to the submitting of

Schedule A and B under seal and good cause given, these schedules should remain under seal.

SDG&E and Nextel consider the character and nature of the frequency licenses and related equipment to be like-kind. Accordingly, SDG&E and Nextel intend to treat the proposed transaction as a tax-free exchange under Section 1031 of the Internal Revenue Code.

Upon completion of the exchange, SDG&E will retire its existing 800 MHz channels and LMR equipment by removing their book value from rate base while simultaneously recording the new 900 MHz frequencies and replacement equipment in rate base at the equivalent net book value of the replaced system.

Nextel has the contractual right to terminate the Agreement if the Commission does not approve this proposed transaction by October 31, 2002. The details of this proposed transaction is set forth in the Asset Exchange Agreement attached to the application as Exhibit A.

VI. Discussion

SDG&E, owns and operates a trunked radio system to communicate with its mobile service personnel throughout its service territory. For the past several years SDG&E and Nextel have experienced radio frequency interference from the other party. To alleviate this mutual interference, Nextel offered to pay for the cost of relocating SDG&E to a non-interfering band. SDG&E and Nextel now propose to exchange radio frequencies and related equipment subject to the Commission's and FCC's approval. As part of this proposed exchange, Nextel will warrant that the 900 MHz channels are free from interference, suitable for the purpose intended, and licensable to SDG&E under FCC rules.

The proposed exchange will enable SDG&E to replace its nine-year-old 800 MHz radio equipment with new 900 MHz equipment provided by Motorola.

The new system, an upgrade from SDG&E's current system, will have essentially the same features and functionality as its current system. Although the acquisition, installation, optimization, testing, and acceptance of 25 telecommunications sites is a significant endeavor, SDG&E expects to complete acceptance of the telecommunications sites by November 2002. SDG&E seeks Commission approval of its application until June 30, 2003 to ensure that the Commission's approval does not expire in the event the parties encounter unforeseen project implementation delays.

SDG&E and its customers will benefit from this proposed exchange by receiving new functionally-equivalent equipment for SDG&E's aging equipment and by eliminating interference on SDG&E frequencies. The proposed exchange is in the public interest and should be approved to the extent it complies with the California Environmental Quality Act (CEQA).

VII. CEQA Compliance

Applicants represent that the proposed exchange will not result in a direct or reasonably foreseeable indirect physical change in the environment. This is because the proposed exchange merely results in an exchange of personal property consisting of radio equipment and intangible property consisting of radio frequencies. In addition, the proposed exchange is not intended to cause any reasonably foreseeable indirect physical changes in the environment because SDG&E will install the new replacement equipment at existing radio sites, with the exception of Mt. Soledad in La Jolla, which will replace SDG&E's existing Catamaran Hotel site.

Mt. Soledad is an existing telecommunications site, established in the 1940's. There are four major telecommunications sites currently operating on Mt. Soledad: Channel 8 for television and FM broadcast, and commercial uses;

Channel 10 for television and FM broadcast, and commercial uses; a U.S. Navy site for federal government military use; and, a University of California of San Diego site for education and commercial use. These four existing sites support approximately 200 various antennas. A wide variety of antennas are currently in use, including but not limited to, 100-foot-long antennas, 50-foot-long FM broadcast antennas, 20-foot-long commercial radio and public safety antennas, 8-foot diameter microwave dishes, and satellite dishes.

SDG&E proposes to place a new antenna at the Channel 8 site on Mt. Soledad. In comparison to equipment currently installed at Mt. Soledad, the antenna proposed for SDG&E is substantially smaller than the majority of those in use currently and represents one of the smallest antenna types used. The new antenna will be 3.2 feet long and approximately three inches in diameter, similar in size to a baseball bat.

The addition of this single antenna to an existing site for television and radio equipment will not have any reasonable foreseeable indirect physical change in the environment on Mt. Soledad. SDG&E's proposed construction activity falls under the de minimus exemptions for CEQA review under Section 3(B)(1)(E) of General Order (GO) 131-D and Sections (h)(1)(A) and (h)(1)(B) of Rule 17.1 of the Commission's Rules of Practice and Procedure. Moreover, Nextel does not intend to use any of SDG&E's equipment at Nextel's telecommunications sites. Should Nextel subsequently decide to install or modify any of its facilities or the facilities being acquired from SDG&E, Nextel would be required to comply with GO 159 and seek authority or exemption to install any such facilities from the local authority. Accordingly, there is no possibility that the proposed transaction contemplated herein may have any significant impact on the environment.

VIII. Ex Parte Approval

SDG&E has requested that this application be approved on an ex parte basis. Because this application is noncontroversial, in the public interest, and involves only an exchange of assets, this application should be approved on an expedited basis.

Comments on Draft Decision

This is an uncontested matter in which the decision grants the relief requested. Therefore, the applicable 30-day period for public review and comment is being waived pursuant to Section 311(g)(2) of the Public Utilities Code.

Findings of Fact

1. The proposed exchange will enable SDG&E to replace its nine-year-old 800 MHz radio equipment with new 900 MHz equipment provided by Motorola. The new system, an upgrade from SDG&E's current system, will have essentially the same features and functionality as its current system.

2. SDG&E and its customers will benefit from this proposed exchange by receiving new functionally-equivalent equipment for SDG&E's aging equipment and by eliminating interference on SDG&E frequencies.

3. The proposed exchange of radio frequencies and related equipment will not result in a gain on sale to SDG&E.

Conclusions of Law

1. The proposed exchange of radio frequencies and related equipment is not adverse to the public interest.

2. It is reasonable that the information submitted under seal should remain under seal for a period of two years.

3. SDG&E's addition of a single antenna to an existing site for television and radio equipment falls under the de minimus exemptions for CEQA review under GO 131-D and Rule 17.1 of the Commission's Rules of Practice and Procedure.

4. The proposed transfer will not have any adverse impact on the environment.

5. The authority being granted by this order is not a finding of the value of the rights and property to be transferred.

6. The application should be granted to the extent provided in the following order and the order should be effective today to allow the exchange to occur expeditiously.

O R D E R

IT IS ORDERED that:

1. San Diego Gas & Electric Company (SDG&E) is authorized to transfer its licenses to ten 800 megahertz (MHz) Land Mobile Radio frequencies and title to related equipment to Nextel of California, Inc. (Nextel), in exchange for twenty-five 900 MHz frequencies and Nextel Communications, Inc. direct payment on SDG&E's behalf under contracts for the Exchange consisting of new radio equipment, installation costs, and programming services. This exchange of radio frequencies and related equipment shall be as set forth in the Asset Exchange Agreement attached to the application as Exhibit A.

2. Schedule A and B to the System Agreement, attached to the Application as Exhibit B, shall remain sealed for a period of two years from the date of this order. The sealed information shall not be made accessible or disclosed to anyone other than Commission staff during the one-year time period. However, the sealed information may be disclosed upon the execution of a mutually

acceptable nondisclosure agreement or on further order or ruling of the Commission or the Administrative Law Judge, then designated as the Law and Motion Judge.

3. Nextel shall comply with General Order 159 and seek authority or exemption to install or modify any of its facilities or the facilities being acquired from SDG&E should Nextel subsequently decide to install or modify any such facilities.

4. SDG&E shall notify the Director of the Commission's Energy Division in writing of the exchange of radio frequencies and related equipment, as authorized herein, within 10 days of the date of consummation of such transfer. A true copy of the transfer documents shall be attached to the written notification.

5. Within 60 days after the completion of the exchange, SDG&E shall file a copy of each journal entry used to record the exchange of radio frequencies and related equipment with the Commission's Energy Division for approval.

6. The application is granted as set forth above and the authority granted shall expire if not exercised by June 30, 2003.

7. Application 01-08-037 is closed.

This order is effective today.

Dated November 29, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

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